

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

KEVIN A. ASHBY,

Civil No. 08-4693 (PAM/FLN)

Plaintiff,

v.

**REPORT AND
RECOMMENDATION**

AUTUMN PARK
INVESTMENT COMPANY LLC, and
UNITED TOWING, INC.,

Defendants.

This matter is before the undersigned United States Magistrate Judge on Plaintiff's pro se "Application To Proceed Without Prepayment of Fees," (Docket No. 2), by which he is seeking leave to proceed in forma pauperis, ("IFP"), as permitted by 28 U.S.C. § 1915(a)(1). The case has been referred to this Court for report and recommendation under 28 U.S.C. § 636 and Local Rule 72.1. For the reasons discussed below, the Court will recommend that Plaintiff's IFP application be denied, and that this action be summarily dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

An IFP application will be denied and the action will be dismissed if the plaintiff has filed a complaint that is found to be "frivolous or malicious." 28 U.S.C. § 1915(e)(2)(B)(i). "A complaint filed in forma pauperis is malicious if it duplicates the allegations of another complaint filed by the same plaintiff." Crane v. Cockrell, No. 02-10998 (5th Cir. 2003), 2003 WL 21140055 (unpublished opinion) at * 1, citing Pittman v. Moore, 980 F.2d 994, 994-95 (5th Cir. 1993); Wilson v. Lynaugh, 878 F.2d 846, 850 (5th Cir.), cert. denied, 493 U.S. 969 (1989). See also Aziz v. Burrows, 976 F.2d 1158 , 1158 (8th Cir. 1992) (under 28 U.S.C.

§ 1915, “district courts may dismiss a duplicative complaint raising issues directly related to issues in another pending action brought by the same party”). “Because district courts are not required to entertain duplicative or redundant lawsuits, they may dismiss such suits as frivolous pursuant to § 1915(e).” Cottle v. Bell, No. 00-6367 (4th Cir. 2000), 2000 WL 1144623 (unpublished opinion) at *1, citing Aziz, supra.

The complaint that Plaintiff has filed in this case appears to be identical, in every jot and tittle, to the complaint that he previously filed in this District in Ashby v. Autumn Park Investment Company LLC, Civil No. 08-4552 (PJS/AJB). Because Plaintiff’s present complaint duplicates the complaint he filed in another still-pending case, the Court finds the present action to be “frivolous or malicious,” for purposes of determining whether Plaintiff should be granted leave to proceed IFP. The Court will therefore recommend that Plaintiff’s present IFP application be denied, and this action be summarily dismissed, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

RECOMMENDATION

Based upon the foregoing and all of the files, records and proceedings herein,

IT IS HEREBY RECOMMENDED that:

1. Plaintiff’s “Application to Proceed Without Prepayment of Fees,” (Docket No. 2), be DENIED;

2. This action be summarily DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

Dated: July 23, 2008

s/ Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

Pursuant to the Local Rules, any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, on or before **August 11, 2008**,

written objections which specifically identify the portions of the proposed findings or recommendations to which objection is being made, and a brief in support thereof. A party may respond to the objecting party's brief within ten days after service thereof. All briefs filed under the rules shall be limited to 3500 words. A judge shall make a de novo determination of those portions to which objection is made. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is, therefore, not appealable to the Circuit Court of Appeals.